IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.748 OF 2005

Smt.Ashabai Pandurang Hasnale .. Appellant

Versus

Shri Mukund Sakharam Bhagwant & Ors. Respondents

Mr.U.B.Nighot for appellant

CORAM : P.V.KAKADE, J.

DATE : 8TH AUGUST, 2005.

P.C.:

1. The present appeal is preferred against the judgment and order passed by Addl. District Judge, Pune dated 19.7.2004 dismissing the appeal and confirming the judgment and decree passed by Civil Judge, Junior Division, Khed dated 19.3.2002 decreeing the suit for specific performance against the Defendant Nos.1, 3 and 5.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The Plaintiff filed the suit for specific performance on the basis of agreement to sale the suit property. According to the plaintiff, Gat No.233 was owned and possessed by the defendant nos.1 and 2, as they had owner of the suit property on the strength of the Will deed. The defendants no.1 and 2 agreed to sell the land for consideration of Rs.40,000/= on 24.1.1999 and accordingly executed agreement to sale Sathe-Khat in favour of the plaintiff. On the day of the execution of the said agreement the defendant nos.1 and 2 received amount of Rs.20,000/= in cash and it was agreed between the parties that after mutating the defendants name in 7/12 extract of the land within one month the defendants executed the sale deed of the land in favour of the plaintiff. The defendants got their names mutated and plaintiff issued notice to defendant Nos.1 to 4 on 11.11.1992 through lawyer. However, in the meantime defendant no.5 purchased the suit property and hence she is also impleaded in the suit. The defendants contested the suit on various grounds, inter alia, submitting various objections and denied the claim of the

plaintiff.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved the plea for specific performance and as such the decree came to be passed against the defendant nos.1, 3 and 5. The appeal was carried to the District Court. The Addl. District Judge after hearing both the parties came to the conclusion that the findings recorded by the lower court were legal and proper and dismissed the appeal. Hence the present appeal.

4. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. The learned counsel for the appellant sought to raise question that the defendant no.5 was bonafide purchaser for value without notice and therefore, decree should not have been passed against her. However, available evidence on record is sufficient to show that such plea cannot be raised by the defendant no.5 and the lower appellate court has rightly discarded such plea. It was also submitted that the plaintiff had not signed the suit agreement, and therefore, the contract was not enforceable in law.

However, in that regard it is also an admitted position by the concerned defendants that they indeed executed the agreement agreeing to sell the suit property. Under such circumstances it cannot lie in the mouth of the appellant that the contract is not enforceable in law. As such I do not find any merits in the appeal and hence it stands dismissed.